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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.190 OF 2002

Uttam Kachru Karad)
At Songiri, Tal. Sinnar)
Dist. Nasik)
At present undergoing sentence at)
Nasik Road Central Prison, Nasik).. APPELLANT

VERSUS

The State of Maharashtra)
(At the instance of Sinnar P. Stn.)).. RESPONDENT

Mr.Anil Lala for the Appellant.

Mr.F.R. Shaikh, Additional Public Prosecutor,
for the Respondent.

**CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.**

DATED: 21ST SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. This Appeal is directed against the judgment and order of the 1st Adhoc Additional Sessions Judge, Nashik in Sessions Case No.69 of 2001. By this judgment dated 11th December 2001, the Appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to life imprisonment. He has also been found guilty and convicted of the offence punishable under Section 498-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year.

2. The case of the prosecution is that the

Appellant used to physically and mentally torture his wife Mangala. At the time of their marriage, he had insisted on his monetary demands being fulfilled by his father-in-law. The physical and mental torture meted out to Mangala continued till her death on the night of 4th and 5th February 2001. Her body was found in the Musalgaon forest along side the Sinnar-Shirdi road. She had been strangulated. The Appellant who was found lying injured near the dead body of his wife, has been arrested and charged for having killed her. He was tried by the Sessions Court, Nashik. The trial has resulted in a conviction and sentence for life imprisonment for the Appellant.

3. With the assistance of the learned Advocate for the Appellant and the learned Additional Public Prosecutor, we have scrutinised the entire evidence on record. We find that there are no eye witnesses to the incident and the case is entirely based on circumstantial evidence. The prosecution has examined ten witnesses to prove its case. The main thrust of the prosecution’s case is that the Appellant was last seen together with the victim between 9.00 and 9.30 p.m. on 4th February 2001 near the Musalgaon forest. Two witnesses, namely, PW4 and PW6, had seen them between that period. Thereafter the body of the victim was discovered the next morning at around 7.00 a.m. about 500 feet into the forest.

4. PW1 is the father of the victim Mangala. He has deposed about the harassment meted out to his daughter by the Appellant. In his examination in chief, he has stated that the Appellant had demanded Rs.10,000/- from him which he was unable to provide. However, in the cross-examination, he has admitted that the Appellant had sought this amount so as to enable him to secure a job for the son of PW1. This witness has stated that his daughter and the Appellant were with him on 4th February 2001. They had dinner a little after 8.00 p.m. He presented a sack of bajra to his daughter. This witness has then stated that the couple left for their own house between 9.00 and 9.30 p.m. on 4th February 2001. They left on a motor-cycle taking the sack of bajra with them. The witness was informed of his daughter's death the next morning at about 7.00 a.m. He left immediately for the spot. He has deposed that the body of his daughter was found about 500 feet away from the road in the Musalgaon forest. The sack which they were carrying on the motor-cycle was also found lying on the ground. The witness has deposed that when he reached the spot, both the victim and the accused were found at the site.

5. The testimony of this witness has been corroborated by PW5, who is his brother. This witness has spoken about the harassment meted out by the Appellant to the victim. He has stated that he accompanied PW1 to the spot when he was informed of

Mangala's death. This witness states that, when they reached there, the accused was no longer at the spot while the dead body of Mangala was lying there. He then deposed that when he and his relatives found that the accused had been admitted to the hospital run by PW2, they went there to question him as to how the incident had occurred. The accused informed them that he and Mangala were attacked by thieves.

6. PW2 is the Doctor who examined the accused. He has stated that the accused was admitted to his hospital on 5th February 2001 by his friends. Although the accused was brought to the hospital in an unconscious condition, when PW2 examined him, he was fully conscious. This witness has deposed regarding the injuries found on the accused. They were scratch injuries or could be considered as cutting injuries on both his forearms from the fingers upwards to the elbow joints. The Doctor has opined that the injuries indicated that they were self inflicted and were not such which could have been caused in the scuffle.

7. The Doctor who performed the post mortem of the dead body of Mangala was examined as PW3. This Doctor has mentioned that the death must have occurred about twelve hours before the body was subjected to the post mortem examination. The post mortem was conducted between 4.30 and 5.30 p.m. on that day. Therefore, the time of death was prior to 4.30 to 5.30 a.m. This

Doctor has described the injuries sustained by the deceased. The Doctor has also stated that the death must have occurred three to five hours after the last meal. According to PW1, his daughter had dinner at his house between 8.00 and 9.00 p.m.. Therefore, the time of death could be between the midnight of 4th February 2001 and 2.00 a.m. on 5th February 2001. The cause of death has been stated as asphyxia due to strangulation. This Doctor also examined the accused in the afternoon of 5th February 2001. He has opined that the injuries sustained by the accused were possible with a hard and a pointed object. These injuries had been caused within the last twenty four hours. He has described the injuries on the forearms of the Appellant as abrasions.

8. PW4 is a chance witness who has seen the Appellant and the victim near the Musalgaon forest between 9.00 and 9.30 p.m. This witness has stated that he was proceeding on his motor-cycle towards Sinnar at about 9.30 p.m. with a friend. He noticed a motor-cycle parked in the forest development with a girl and a boy standing by its side. The forest, according to this witness, is about 10 feet away from the edge of the road and there were no street lamps on this road. The forest area extends about 2 kms. along with the road. This witness has admitted that he did not inquire as to the identity of the couple that night. It was only the next morning when he was proceeding along that road that he noticed people had gathered at the spot

where he had seen the motor-cycle the previous night.

9. PW6 has been examined by the prosecution in order to establish that the Appellant was last seen together with the victim. This witness has stated that when he was returning along with Sinnar-Shirdi road at about 9.30 p.m., he saw the Appellant and his wife on his motor-cycle going towards the forest. It appears that initial statement made by this witness is that he saw a couple resembling the Appellant and his wife. Thereafter he has deposed that he could identify the couple in the moon light and in the beam of light from the head light of his motor-cycle. He did not bother about the couple and proceeded ahead. It was only when he heard about the Appellant having killed his wife in the forest area that he went to the spot along with the other villagers. This witness's statement was recorded by the police on 24th March 2001, more than a month after the incident.

10. PW7 is the panch witness to the inquest panchanama and PW8 has proved the spot panchanama. PW8 has deposed that the Sinnar-Shirdi road is a busy road with heavy traffic round the clock.

11. PW9 is the panch for the arrest panchanama. He has deposed regarding seizure of the clothes of the accused.

12. PW10 is the Investigating Officer. This witness has corroborated PW1 when he states that the dead body of Mangala was found lying around 500 feet from the Sinnar-Shirdi in the forest. He has spoken about the fact that a coir rope was recovered from the spot besides other articles. He has also deposed that there were marks of the earth being trampled. When the Investigating Officer reached the spot, he found that the accused had already been taken to the hospital run by PW2. An FIR was registered by the Investigating Officer. This witness has admitted that although marks of trampling of the earth were found at the spot of the incident, he had not bothered to investigate the marks. The witness has also admitted that he had not sent the blood or the rope which were found at the scene of offence for analysis by the Chemical Analyser. He had also not sent the nail clippings of the Appellant or the deceased to the Chemical Analyser.

13. Having considered the entire evidence on record, we are afraid that we are unable to agree with the findings of the trial Judge as there is a complete lack of evidence in this case pointing to the guilt of the Appellant. The circumstances which the prosecution relies on to establish that the Appellant had committed the offence are : (i) ill-treatment by the Appellant of his wife; (ii) physical torture which had also resulted in the deceased’s tooth being broken; (iii) monetary demands made by the Appellant on the family of the

deceased; (iv) the insistence of the Appellant to leave the house of PW1 on the night of 4th February 2001 despite the deceased being unwell; (v) the Appellant having been last seen with the victim; (vi) the victim having been strangulated and a rope being found on the spot.

14. Taking into consideration the entire evidence on record, there is no doubt that there may have been ill-treatment by the Appellant of his wife. However, this would not necessarily lead to the conclusion that it is the Appellant who had killed his wife. The circumstance of physical and mental torture would not, in our opinion, lead to this inference. The fact that the Appellant and the deceased were last seen together by PW4 has also been established. PW4 has spoken about having seen a couple standing near the forest along side the Sinnar-Shirdi road at about 9.30 p.m. next to a stationary motor-cycle.. PW6 initially stated that he could not identify the couple, but changed his version and said that he could identify the Appellant and the deceased as there was sufficient light. He has stated that it was possible to identify the couple in the moon light and in the beam of light emitted from the head light of the motor-cycle he was riding. Therefore, in our opinion, the identity of the couple seen by PW4 and PW6 has not been established beyond doubt. PW1 has deposed that the couple left his place between 9.00 and 9.30 p.m. The prosecution has not established either

the distance between the house of PW1 and the forest or the time taken to travel from his house to the spot where the incident had occurred. Therefore, the identity of the couple at that spot between 9.00 and 9.30 p.m. is doubtful. Assuming that it was the Appellant and the deceased who had been seen by PW4 and PW6, we are still unable to draw the conclusion that it was the Appellant who had killed the deceased.

15. The Doctor who conducted the post mortem on the dead body i.e. PW3 has opined at one stage that the death occurred between 4.30 and 5.30 am. on 5th February 2001, whereas else where he has stated that the death occurred around 3.00 to 5.00 hours after the deceased had taken her last meal. According to PW1, the deceased had her last meal at his house between 8.00 and 8.30 pm. on 4th February 2001. Therefore, the death could have occurred , according to the Doctor, between midnight of 4th February and 2.00 a.m. the next day. The prosecution has failed to explain the time lag between the death and the discovery of the body of the victim at around 7.00 a.m. in the morning.

16. According to PW5, the Appellant had informed him and the other relatives of the deceased that he and his wife were attacked by thieves in the forest. The Appellant was found the next morning with injuries on his person. The Doctor who examined him has opined that they were self inflicted injuries. However, we are not

convinced that the prosecution has proved its case against the Appellant. There is no explanation from the prosecution has to why if the Appellant had indeed killed his wife, he would continue to remain with the dead body till they were discovered the next day. If we accept the time of death as between 2.00 and 4.00 a.m. on 5th February 2001, the prosecution has not explained why the Appellant would continue to remain with the dead body for over five hours. In our opinion, there is lack of evidence and the chain of circumstances has not been completed. Significantly, although the post mortem report indicated that the deceased was strangulated, the Investigation Officer has not bothered to send the rope which was found at the spot for analysis. The nail clippings of the Appellant and the deceased also have not been analysed. If the nail clippings had been analysed, the report would presumably have indicated whether there was any sort of struggle between the Appellant and the deceased which led to the Appellant killing his wife as alleged by the prosecution. There is no evidence on record to indicate that the rope which was found at the spot was in fact used to strangle the deceased. In such circumstances, we are afraid, that there is a missing link in the chain of circumstances. The prosecution has not been able to establish the guilt of the accused beyond reasonable doubt.

17. In view of the fact that there is complete lack of evidence, the benefit of doubt must be given to the

Appellant. Hence, Appeal allowed. The impugned judgment and order dated 11th December 2001 passed by the 1st Adhoc Additional Sessions Judge, Nashik in Sessions Case No.69 of 2001 is set aside. The Appellant be released forthwith, if otherwise not required in law.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)